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KEY MESSAGES ON THE RIGHT TO BE FORGOTTEN

As part of the review of the Consumer Credit Directive (CCD), the European Parliament has called for the introduction of a EU-wide right to be forgotten (RTBF) for persons with a prior diagnosis of certain communicable and non-communicable diseases, including cancer. The RTBF would mean that former cancer patients who have overcome their illness would not be required to disclose the prior diagnosis of cancer when applying for life insurance. In February 2021 the European Commission published "Europe's Beating Cancer Plan" which, along with setting out steps for the prevention and treatment of cancer, includes wider considerations of improving the quality of life of cancer patients, survivors, and carers. There have been some concerns with such an approach and its compatibility with private insurance but also the consequences to consumers, including those whom an RTBF is intended to benefit.

In this short letter, the Actuarial Association of Europe (AAE) gives its key messages to this highly important and sensitive topic. The **AAE is of the opinion**, that even though the RTBF would be looked at now only from cancer survivors' point of view, **there are both technical and wider aspects that should be considered in any new guidance or regulations** as this one at hand may be considered as setting precedent. We find that **the following topics should be considered in any policy work**:

Good actuarial background work on RTBF already exists

Actuaries as a profession work for the good of our societies. We share the concerns over the possibility that individuals face inappropriate treatment based on their health history when accessing financial products. Actuaries are committed to developing tools that maintain the benefits from actuarial pooling of risks while they also ensure fair and non-discriminatory practices.

A study was published in March 2023 **by the Society of Actuaries in Ireland** looking at the '*Consideration of the potential impacts of the introduction of a Right to be Forgotten framework for Cancer Survivors in Ireland when applying for Life Insurance products* (link)'. The main findings of this work were that

- **The severity of the cancer suffered** (for which treatment has ended) **and also the duration since cancer treatment ended** is a **factor in insurers' underwriting decisions**.
- **Different groups** of consumers are likely to be **impacted** by the introduction of an RTBF framework **in different ways**
  (1) Life Insurance products will likely become more affordable for some cancer survivors;

The Actuarial Association of Europe (AAE) was established in 1978 under the name Groupe Consultatif to represent actuarial associations in Europe. Its primary purpose is to provide advice and opinions to the various organisations of the European Union - the Commission, the Council of Ministers, the European Parliament, the European Supervisors and their committees – on actuarial issues in European legislation. The AAE currently has 38 member associations in 36 European countries, representing over 29,000 actuaries. Advice and comments provided by the AAE on behalf of the European actuarial profession are totally independent of industry interests. The Actuarial Association of Europe is registered in the EU Transparency Register under number 550855911144-54

(2) other consumers who have never been diagnosed with cancer are likely to see an increase in premiums if an RTBF framework is introduced (i.e., cross-subsidizing for consumers who meet the RTBF criteria); and
(3) consumers that have recovered from other illnesses or diseases may feel unfairly treated as they would still be required to disclose their prior condition.

In the study there is also considerations of the different ways a RTBF framework could impact insurance products from the point of view of pricing, underwriting, claims handling, etc.

As noted above, the study made reference to the varying final underwriting outcomes for cancer survivors. A MunichRe study from 2023 provided some further insights into how the outcomes may vary by cancer type. Also there has been findings from the impact on prices in France where RTBF was introduced already in 2016. According to an online-article, the death premium has increased around 20% to 25% since then.

As a remark, we believe that the risks from individual insurance contracts might increase materially, e.g., certain cancer types with high risk sums could become much riskier than before. Traditionally, health and life insurance policyholders have faced more detailed questions and health checks when the requested risk sum was above a certain threshold. **One possible consequence might be that risk sums would be narrowed down which then creates protection gaps** for policyholders in this regard.

We have already examples from history

The **EU rules on gender-neutral pricing in insurance industry** entered into force on 2012 and can be considered to have a number of similar characteristics as the RTBF. The consequences of this regulation have been studied in academics and in insurance publications. One example from Germany (The effect of a ban on gender-based pricing on risk selection in the German health insurance market - PMC (nih.gov)) is looking at the topic from a public – private angle and another from Cass Business School (2015_uk_chancho-yeung.pdf (scor.com)) covers the topic from a broader perspective.

An AAE study from 2011 (Groupe Consultative at the time) looked closely at the **usage of age & disability as rating factors in insurance** - Why are they used and what would be the implications of restricting their use? One of the findings was that if insurers were not allowed to use age or disability as risk factors, there would be profound consequences for the availability of some types of insurance on a private voluntary basis. This would then put more pressure to the public side to ensure sufficient protection.

Recently, there has been a quite considerable media coverage in **Denmark (The Mona Case)** about a **customer who was refused life insurance coverage** from 3 providers **solely on the basis of BMI information** submitted during the underwriting process. The argument was that a person's health situation cannot be assessed using BMI data. The Institute of Human Rights are recommending that anyone refused insurance on the basis of BMI should take the case to the Danish Appeals Board for Insurance and, if refused, take it further within the judicial system. As we know, insurance companies make an assessment of the health of a customer on the basis of a risk assessment. However, the underwriting process should be fair and there must be a factual reason for rejection. On the basis of this case the **Danish trade association for insurance**

companies and pension funds (Forsikring & Pension) is recommending that BMI is not used in the underwriting process.

Public-Private viewpoint and key definitions of the RTBF

RTBF has a direct link to **public health coverage and the actual need for (private) insurance**, which differs amongst member states in the EU. We find that **this needs to be better analysed** so that both public and private side coverage is well enough understood to enable any policy setting on the private side offering. In an analysis on private insurance, the distinction between mandatory (strict conditions and pricing for the market) and voluntary (insurance policy law controls underwriting in general level) covers should be looked as this also differs country-by-country.

The inequality aspect and especially **separation of two topics - differentiation from discrimination in pricing and underwritin**g – should be analysed closely. There might be for instance personal characteristics that cannot be priced separately and thus need to be pooled. The Geneva Association recently published a study ['Regulation of Artificial Intelligence in Insurance'] looking at these aspects and found out that:

*"Discrimination and fairness need to be distinguished from differentiation, a fundamental aspect of the insurance business model, which involves charging risk-commensurate premiums to policyholders. A key element of this practice is **actuarial fairness, which ensures that customers bearing the same risk are charged the same price**. Differentiation is based on risk factors over which the insured, to some extent, has some influence, such as driving behaviour.*

*In an insurance context, differentiation is often mistaken for discrimination, but there is a fundamental difference between the two. **Discrimination occurs when differentiation is based on factors prohibited by law, like ethnic origin, sex or sexual orientation - factors beyond the insured's control**. As AI has the potential to enhance the underwriting process by uncovering previously unavailable information and correlations, it is important to highlight that such activities are subject to anti-discrimination laws and regulations that govern the conduct of insurers in this regard."*

When discussing fairness in private sector products it is sometimes beneficial to **make a distinction between essential and non-essential products**. In this context essential products are those whose lack leads to the social exclusion of individuals. Non-essential ones are rather nice-to-have products with less consequences to the individual's well-being. When we talk of essential products it is paramount that the denial of cover is very limited. It needs to be added that what is essential depends very much on the jurisdiction considered. E.g., in countries with extensive and operationally effective public health care systems, private health policies may be viewed as less essential.

In insurance and more generally in all financial products there exists also the phenomenon called **poverty premium** (a closely related concept is that of ethnicity premium). Poverty premium means that poor people tend to pay more for their insurance and other financial services. RTBF is also linked to this and can lead to intersectional stress. It is important to develop better tools to implement sharing/pooling of risks with, e.g., more efficient use of AI and data and better scientific understanding of the true risks of different medical conditions.

The broader question on inequality and usage of data

Open insurance and new ways of collecting data might make RTBF rules somehow irrelevant. As using open data gets more common, there might be indirect traces from survivors recovering from cancer which are hard to hide. It would also be difficult to regulate how companies could use them. The obvious question that follows is, that if asking questions on, for example, health history was forbidden, could insurers get the relevant indicators from other data produced by the policyholder? And if so, this might not apply to all insurers as the abilities to use data differs amongst insurers, usually SMEs having less capabilities to benefit from its use.

Even though the discussion has been around CCD and cancer, there obviously is **a bigger theme of restricting the use of data in insurance behind this**. In general, insurers have a vast need to collect, use and analyse data to be able to offer long term products with fair (i.e. adequate and correct) conditions and prices. Any restriction to this should be considered very carefully. One example can be seen from the climate risk protection gap discussion where it is not related to regulatory restrictions, but sufficient data is not yet available thus hindering the proper insurance offering and already creating protection gaps.

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